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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/238,742	01/28/1999	ALAIN A. MEILLAND	006450-301	5955

21839 7590 02/10/2004

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ALEXANDRIA, VA 22313-1404

EXAMINER

LOCKER, HOWARD J

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 02/10/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.



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Patent and Trademark Office**

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Commissioner of Patents and Trademarks

(see attached Office correspondence, including request  
for information under 37 CFR 1.105, and PTO-892)

  
HOWARD J. LOCKER  
EXAMINER  
GROUP ART UNIT 1661

09/238742  
PTO-80C (REV. 2/95)

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1. This application was withdrawn from issue on December 18, 2000, and subsequently thereto, has been reconstructed with the applicant's kind assistance, as the original file was lost. Any inconvenience caused by the above is regretted.

An Office correspondence on this pending application appears below.

Applicant should note that the only issue outstanding in this application is that relative to 37 CFR 1.105/35 U.S.C. 102(b) as set forth herein.

2. The claimed rose cultivar 'Meinussian' is described in Breeder's Right Number QZ PBR 970101, which was published on April 15, 1997, more than one year prior to the filing date of the instant application for United States Plant Patent (January 28, 1999).

The above referenced published application constitutes a "printed publication" under 35 U.S.C. 102 because it is accessible to persons concerned with the art to which the document relates. See *In re Wyer*, 655 F.2d 221, 226; 210 USPQ 790, 794 (CCPA 1981). See also MPEP Section 2128.

For example, UPOV publishes the application number, grant number, date of publication, species of plant, and variety denomination for PBR certificates, and copies of the grant and application are obtainable through the Plant Variety Rights Journal. Plant varieties are also entered in the Register of Community Plant Variety Rights and Register of Applications for Community Plant Variety rights, both of which

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are open to the public. Thus, information regarding the claimed cultivar, in the form of the publication noted above, was readily available to interested persons of ordinary skill in the art.

A printed publication can serve as a statutory bar under 35 U.S.C. 102(b) if the reference, combined with knowledge in the prior art, would enable one of ordinary skill in the art to reproduce the claimed plant. *In re LeGrice*, 301 F.2d 929, 133 USPQ 365 (CCPA 1962). If one skilled in the art could reproduce the plant from a publicly available source, then a publication describing the plant would have an enabling disclosure. See *Ex parte Thomson*, 24 USPQ 2d 1618, 1620, (Bd. Pat. App. & Inter. 1992) (“*The issue is not whether the [claimed] cultivar Siokora was on public use or sale in the United States but, rather, whether Siokora seeds were available to a skilled artisan anywhere in the world such that he/she could attain them and make/reproduce the Siokora cultivar disclosed in the cited publications.*”).

While the publication cited above discloses the claimed plant variety, a question remains as to whether the foreign publication is enabling. If the plant was publicly available, then a published application, combined with the knowledge in the prior art, would enable one of ordinary skill in the art to reproduce the claimed plant. The ability of the Office to determine whether the claimed plant was publicly available is limited. Electronic and paper search within the Office has not revealed any evidence that the claimed plant was on sale anywhere in the world more than one year prior to the filing date of the subject United States Plant Patent application.

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However, the claimed plant may have been sold at the wholesale level, sold under a different name, or even distributed to interested parties (i.e. the public) free of charge. Since the inventor and the assignee (if applicable) of the instant application are in a much better position to know when, if ever, the claimed plant was made publicly available, the Examiner is requiring this information per the attached Requirement for Information Under 37 CFR 1.105.

A requirement for information under 37 CFR 1.105 is attached. This requirement is subject to the provisions of 37 CFR 1.134, 1.135, and 1.136 and as it is unaccompanied by an Office action on the merits has a shortened statutory period of 2 months from response from the mailing date of this communication.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37CFR 1.136(a).

3. Applicant is advised of the new mandatory procedures for amending the specification and claim under 37 CFR 1.121. Applicant may review same on the internet at the following site:

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>

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4. Effective May 1, 2003, the USPTO has a new Commissioner for Patents address. Correspondence in patent related matters to organizations reporting to the Commissioner for Patents must now be addressed to:

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

For further information regarding the new address, see *Correspondence with the United States Patent and Trademark Office*, 68 Fed. Reg. 14332 (March 25, 2003).

5. Any inquiry concerning this communication from the examiner should be directed to Examiner Howard J. Locker whose telephone number is 703-308-2924 until 1/26/04 (571-272-0980 thereafter), and whose normal work hours are Monday through Thursday, from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Bruce Campell, can be reached at 571-272-0974.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 1600 receptionist whose telephone number is 703-308-0196.


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**TELECOPY/FACSIMILE TRANSMISSION**

Papers related to this application may be submitted to TC 1600 by facsimile transmission. Papers should be faxed to this TC via the PTO Fax Center in Crystal Mall 1 (CM 1). The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The official fax number for TC 1600 is: 703-872-9306.

Howard J. Locker/hjl

January 21, 2004

  
HOWARD J. LOCKER  
EXAMINER  
GROUP ART UNIT 1661

**REQUIREMENT FOR INFORMATION UNDER 37 CFR 1.105**

Applicant and the assignee (if applicable) of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined reasonably necessary to the examination of this application.

The information is required to determine when, if ever, the claimed plant variety, 'Meinusian' was publicly available prior to the filing date of the instant application for United States Plant Patent.

In response to this requirement, please provide any information available regarding the sale or other public distribution of the claimed plant anywhere in the world, including the date(s) of any sale or other public distribution. Also, please provide copies of the referenced published applications, and resulting published grants. The Office does not maintain a collection of Breeder's Rights documents and they are not readily obtainable electronically. It is reasonable to expect that applicant or assignee (if applicable) can readily obtain the requested information and documents.


The fee and certification requirement of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.



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Applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or not readily obtained will be accepted as a complete response to the requirement for that item.

This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136, and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

  
HOWARD J. LOCKER  
EXAMINER  
GROUP ART UNIT 1661